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5                   **UNITED STATES DISTRICT COURT**  
6                   **EASTERN DISTRICT OF WASHINGTON**

7                   JOSEPH and LINDA RUH, husband  
8                   and wife, and JOSEPH and LINDA  
9                   RUH, as guardian of KATE RUH.,  
                 minor,

10                  Plaintiffs,

11                  v.

12                  CITY OF EAST WENATCHEE, a  
13                  municipal corporation, and  
14                  WILLIAM REDFIELD and "JANE  
                 DOE" REDFIELD, husband and  
                 wife, and the marital community  
                 composed thereof,

15                  Defendants.

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17                  NO. CV-04-0441-RHW

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21                  **ORDER GRANTING IN PART**  
                 **DEFENDANTS' MOTION FOR**  
                 **PARTIAL SUMMARY**  
                 **JUDGMENT, REMANDING TO**  
                 **STATE COURT**

22                  Before the Court is Defendants' Motion for Partial Summary Judgment (Ct.  
23                  Rec. 12). Oral argument was held on April 17, 2006. David Force appeared on  
24                  behalf of Plaintiffs; Brian Christensen appeared on behalf of Defendants. This  
25                  Order memorializes the Court's oral ruling.

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27                  **BACKGROUND**

28                  Plaintiffs brought a claim against Defendants in Douglas County Superior  
Court alleging negligence, negligent infliction of emotional distress, negligent  
supervision, and a violation of 42 U.S.C. § 1983. The complaint arose from a car  
accident involving minor Plaintiff Kate Ruh and Defendant William Redfield, who  
at the time was a police officer for the City of East Wenatchee. Defendants  
removed the case to federal court on November 22, 2004. The Court has  
jurisdiction over the action pursuant to 28 U.S.C. § 1331. The current motion is

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1 for summary judgment dismissal of Plaintiffs' civil rights claim, negligent  
 2 infliction of emotional distress claim, and negligent supervision claim.

3                   **STANDARD OF REVIEW**

4                 Summary judgment is appropriate if the "pleadings, depositions, answers to  
 5 interrogatories, and admissions on file, together with the affidavits, if any, show  
 6 that there is no genuine issue as to any material fact and that the moving party is  
 7 entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). When considering  
 8 a motion for summary judgment, a court may neither weigh the evidence nor assess  
 9 credibility; instead, "the evidence of the non-movant is to be believed, and all  
 10 justifiable inferences are to be drawn in his favor." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986).

12                   **FACTS**

13                 The following facts are undisputed unless otherwise noted:

14                 Defendant William Redfield, employed as a police officer by the City of  
 15 East Wenatchee, and Plaintiff Kate Ruh were involved in a car accident on  
 16 February 11, 2004. The accident occurred at approximately 8:11 p.m., at the  
 17 intersection of Ninth Street and Eastmont in the City of East Wenatchee.

18                 At the time of the accident, Officer Redfield was responding to a report of an  
 19 attempted robbery. He was told that a yellow truck was following the potentially-  
 20 armed suspect, and he drove eastbound on Ninth Street in search of the yellow  
 21 truck. Officer Redfield learned that the suspect was on foot, and he decided to turn  
 22 around. He reasoned that a suspect on foot could not have traveled as far as he had  
 23 gone, and he recalled passing a yellow truck earlier that he did not think was  
 24 involved. The Officer was concerned that the citizen in the yellow truck would be  
 25 in danger if he or she attempted to contact the allegedly-armed suspect. The parties  
 26 dispute whether Officer Redfield activated his emergency lights; two witnesses of  
 27 the accident reported he had them on whereas one reported he did not. He did not  
 28 activate his siren.

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When Officer Redfield approached the intersection of Ninth Street and Eastmont, driving westbound now, he had the red light. Defendants assert he slowed to allow vehicles to clear the intersection, but Plaintiffs maintain he did not slow or stop. Witnesses estimate his speed as somewhere between 20 and 40 miles per hour. Meanwhile, Kate Ruh was driving southbound on Eastmont. As she approached the intersection, she had the green light. Neither Officer Redfield nor Kate Ruh saw the other as they entered the intersection. As a result of the accident, the rear quarter panel of the Officer's patrol car was damaged, and the front end of Plaintiff's vehicle was damaged.

Immediately following the collision, Plaintiff exited her vehicle. She called her parents and informed them she had been in an accident. She was crying on the phone. Mr. and Mrs. Ruh were at home, about an eighth of a mile from the intersection. When they arrived on the scene, Mr. and Mrs. Ruh saw the car and were surprised by the extent of damage to the vehicle, but they knew their daughter was no longer in the car.

Kate Ruh experienced back pain a few days after the collision and visited the doctor, but she has been pain-free for some time. Mr. and Mrs. Ruh claim they have suffered from stress and anxiety related to Kate's well-being as a result of the accident, viewing the scene, and Kate's emotional suffering at the time of the accident. They have not sought counseling for any emotional condition. Officer Redfield was not disciplined for his part in the accident by the City of East Wenatchee.

### DISCUSSION

Defendants argue that summary judgment is appropriate for Plaintiffs' § 1983 claim and for Plaintiffs' negligent infliction of emotional distress and negligent supervision claims. As to the § 1983 claim, Defendants assert Plaintiffs' constitutional rights were not violated, and, in the event they were violated, the violation did not result from an official municipal policy or custom. Defendants

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1 argue Plaintiffs' negligent infliction of emotional distress claim should be  
 2 dismissed because there was a substantial change in the location and condition of  
 3 their daughter between the accident and their arrival upon the scene and because  
 4 Plaintiffs have not presented any evidence of a diagnosable emotional disorder.  
 5 Lastly, Defendants urge dismissal of Plaintiff's negligent supervision claim due to  
 6 the total lack of evidence to support the claim.

7 To establish liability under § 1983, Plaintiffs bear the burden of proving that  
 8 Defendants: (1) acted under color of state law, and (2) deprived Plaintiffs of rights  
 9 secured by the Constitution or federal statutes.<sup>1</sup> 42 U.S.C. § 1983; *Martinez v. City*  
 10 *of Oxnard*, 270 F.3d 852, 855 (9th Cir. 2001). Defendant Officer Redfield was  
 11 indisputably acting in his official capacity as a police officer at the time the  
 12 collision occurred with Plaintiff Kate Ruh, so Plaintiffs have established the first  
 13 element of their § 1983 claim. Plaintiffs allege Defendants violated Kate Ruh's  
 14 substantive due process rights by recklessly causing the accident.

15 The Supreme Court reviewed a substantive due process claim in *County of*  
 16 *Sacramento v. Lewis*, 523 U.S. 833, 836 (1998). Specifically, the Court considered  
 17 "whether a police officer violates the Fourteenth Amendment's guarantee of  
 18 substantive due process by causing death through deliberate or reckless  
 19 indifference to life in a high-speed automobile chase aimed at apprehending a  
 20 suspected offender." *Id.* In answering "no," the Court held that "in such  
 21 circumstances only a purpose to cause harm unrelated to the legitimate object of

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 23 <sup>1</sup> Section 1983 states in relevant part the following:

24 Every person who, under color of any statute, ordinance, regulation,  
 25 custom, or usage, of any State or Territory . . . subjects, or causes to be  
 26 subjected, any citizen of the United States or other person within the  
 27 jurisdiction thereof to the deprivation of any rights, privileges, or  
 immunities secured by the Constitution and laws, shall be liable to the  
 party injured in an action at law, suit in equity, or other proper  
 proceeding for redress[.]

28 42 U.S.C. § 1983.

1 arrest will satisfy the element of arbitrary conduct shocking to the conscience,  
 2 necessary for a due process violation.” *Id.* The parties agree that *Lewis* and its  
 3 progeny apply to the facts in this case, but they disagree as to the result.

4 Defendants contend that Officer Redfield was engaged in a legitimate law  
 5 enforcement activity by responding to a report of an alleged armed robbery  
 6 suspect. Defendants assert that the officer here did not have the requisite intent to  
 7 harm Plaintiffs or any citizens, thus they are not liable under § 1983 for a  
 8 substantive due process violation. “[L]iability for negligently inflicted harm is  
 9 categorically beneath the threshold of constitutional due process.” *Lewis*, 523 U.S.  
 10 at 849. Furthermore, “high-speed chases with no intent to harm suspects  
 11 physically or to worsen their legal plight do not give rise to liability under the  
 12 Fourteenth Amendment, redressible by an action under § 1983.” *Id.* at 854.

13 The Ninth Circuit has applied the *Lewis* “shocks the conscience” standard to  
 14 cases in which innocent by-standers are injured or killed by law enforcement  
 15 activities. *E.g., Onossian v. Block*, 175 F.3d 1169, 1171-72 (9th Cir. 1999);  
 16 *Moreland v. Las Vegas Metro. Police Dep’t*, 159 F.3d 365, 372 (9th Cir. 1998).  
 17 The *Moreland* court concluded the “shocks the conscience” standard controls “in  
 18 cases where it is alleged that an officer inadvertently harmed a bystander while  
 19 responding to a situation in which the officer was required to act quickly to prevent  
 20 an individual from threatening the lives of others.” *Id.* Like the appellants in  
 21 *Moreland*, Defendants argue that Plaintiffs cannot state a § 1983 claim under their  
 22 theory of negligent or even reckless behavior on the part of Officer Redfield. Even  
 23 if Officer Redfield acted recklessly or with gross negligence, Plaintiffs’ claim  
 24 cannot withstand summary judgment because these matters are not material to the  
 25 controlling question of whether Redfield acted with a purpose to harm Kate Ruh  
 26 that was unrelated to his pursuit of the armed robbery suspect and his attempt to  
 27 stop the suspect from potentially harming others. *Id.* at 373.

28 Plaintiffs counter that a plaintiff seeking to establish a constitutional

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1 violation must demonstrate only that the official's conduct shocks the conscience  
 2 in the particular setting in which that conduct occurred. The *Lewis* Court did state  
 3 that “[d]eliberate indifference that shocks in one environment may not be so  
 4 patently egregious in another, and our concern with preserving the constitutional  
 5 proportions of substantive due process demands an exact analysis of circumstances  
 6 before any abuse of power is condemned as conscience shocking.” 523 U.S. at  
 7 850.

8 In its analysis leading to the conclusion that, where an officer is engaged in a  
 9 high-speed chase aimed at apprehending a suspected offender, only an unrelated  
 10 purpose to cause harm will satisfy the element of arbitrary conduct shocking to the  
 11 conscience necessary to state a due process violation, the Supreme Court  
 12 considered other circumstances where officials' culpability falls “within the middle  
 13 range . . . [of] more than negligence but less than intentional conduct, such as  
 14 recklessness or gross negligence[.]” *Id.* at 849 (internal quotation and citation  
 15 omitted). The Court remarked that “[a]s the very term ‘deliberate indifference’  
 16 implied, the standard is sensibly employed only when actual deliberation is  
 17 practical.” *Id.* at 851. Therefore,

18 [l]ike prison officials facing a riot, the police on an occasion calling for  
 19 fast action have obligations that tend to tug against each other. Their  
 20 duty is to restore and maintain lawful order, while not exacerbating  
 21 disorder more than necessary to do their jobs. They are supposed to act  
 decisively and show restraint at the same moment, and their decisions  
 have to be made ‘in haste, under pressure, and frequently without the  
 luxury of a second chance.

22 *Id.* at 853 (citation omitted).

23 Plaintiffs cite to a Third Circuit case, *Nicini v. Morra*, 212 F.3d 798, 810-11  
 24 (3d Cir. 2000), as additional support that an officer's deliberate indifference may,  
 25 in some circumstances, shock the conscience and rise to the level of a  
 26 constitutional claim. *Nicini* is not binding authority, and it is distinguishable from  
 27 the facts here. The claim in *Nicini* arose from conduct in the foster care context,  
 28 where an affirmative duty to care for those in “custody” exists. *Id.* at 810. In the

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1 foster care context, a state actor's deliberate indifference to alleged abuse of a  
 2 foster child could easily rise to a level that shocks the conscience. The facts of this  
 3 case, however, are more similar to those in *Lewis* and *Moreland*, where an officer  
 4 engaged in legitimate law enforcement activities inadvertently harms either the  
 5 suspect or an innocent by-stander.

6 Plaintiffs also place great weight on the policies and procedures of the East  
 7 Wenatchee Police Department regarding vehicular pursuit. Officer Redfield's  
 8 compliance with these policies or lack thereof is irrelevant to Plaintiffs'  
 9 constitutional claim. Even "deliberate indifference" to the vehicular pursuit policy  
 10 could not "shock the conscience." Instead, Officer Redfield must have acted with a  
 11 purpose to harm Kate Ruh that was unrelated to his attempt to apprehend the armed  
 12 robbery suspect to have perpetrated a constitutional violation. *See Lewis*, 523 U.S.  
 13 at 854; *Moreland*, 159 F.3d at 373. Officer Redfield's decision to drive at a speed  
 14 of 20-40 miles per hour through a red light in pursuit of a robbery suspect and the  
 15 resulting collision are not so arbitrary as to "shock the conscience." *See Onossian*,  
 16 175 F.3d at 1172 (holding no reasonable trier of fact could find that defendants'  
 17 actions shock the conscience where they were engaged in a vehicular pursuit in  
 18 downtown Los Angeles lasting about one minute and traveling at a speed of up to  
 19 45 miles per hour). The facts in this case simply do not support the finding that  
 20 Officer Redfield's actions shock the conscience, so summary judgment on  
 21 Plaintiffs' § 1983 claim against Officer Redfield and the City is appropriate.<sup>2</sup>

22 With dismissal of Plaintiffs' one federal claim, the Court has discretion  
 23 either to exercise ancillary jurisdiction over the remaining state law claims or to  
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25 <sup>2</sup> Defendants also argue Plaintiffs' claim against the City should be  
 26 dismissed because there is no evidence of an official policy or custom. Because  
 27 there is no constitutional violation, the Court need not reach the question of  
 28 municipal liability.

remand the matter back to state court. *See* 28 U.S.C. § 1367(c). This case was originally filed in Douglas County Superior Court on October 28, 2004. Defendants removed the case to this Court on November 22, 2004. The remaining state law claims include negligence, negligent infliction of emotional distress, and negligent supervision. Because Plaintiffs originally filed this matter in state court, the Court elects to remand the remaining state law claims to their chosen jurisdiction.

**Accordingly, IT IS HEREBY ORDERED:**

1. Defendants' Motion for Partial Summary Judgment (Ct. Rec. 12) is **DENIED**, in part, with leave to renew upon remand to Douglas County Superior Court; and **GRANTED**, in part, with regard to the § 1983 claim.

2. The remaining state claims are **REMANDED** to Douglas County Superior Court.

**IT IS SO ORDERED.** The District Court Executive is directed to enter this Order and forward copies to counsel.

**DATED** this 24<sup>th</sup> day of April, 2006.

*s/ Robert H. Whaley*

**ROBERT H. WHALEY**  
Chief United States District Judge

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